



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MAR - 6 2014

John Rowland
10 Executive Drive
Farmington, CT 06032

RE: MUR 6604

Dear Mr. Rowland:

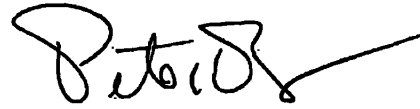
On July 10, 2012, the Federal Election Commission notified you of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. Among the alleged violations were allegations that you, as an agent of CBS Radio Stations, Inc. (WTIC), made a contribution to Lisa Wilson-Foley for Congress in the form of your radio show. On February 25, 2014, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated 2 U.S.C. § 441b(a). Also on that date, the Commission closed its file in this matter.

Documents related to MUR 6604 will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding in MUR 6604, is enclosed for your information.

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If you have any questions, please contact Mark Allen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a long horizontal flourish extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3 RESPONDENT: John Rowland MUR 6604

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5 **FACTUAL AND LEGAL ANALYSIS**

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7 **I. INTRODUCTION**

8 This matter was generated by a Complaint filed with the Federal Election
9 Commission by Kenneth James Krayeske, alleging violations of the Federal Election
10 Campaign Act of 1971, as amended (the "Act"), by Respondent.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Background**

13 The Complaint alleges that CBS Radio Stations Inc. (WTIC) ("CBS Radio") and
14 Rowland as its agent made an in-kind corporate contribution to Lisa Wilson-Foley for
15 Congress (the "Committee") when Rowland used time during a politically-themed radio
16 talk show he hosted to attack one of Wilson-Foley's opponents in the 2012 convention
17 and primary elections.¹

18 Rowland responded to the allegations, asserting that the claims are factually
19 inaccurate and that the appearance on the program of Wilson-Foley's opponent, who held
20 state office, did not occur at Rowland's request and related solely to issues concerning

¹ Compl. at 2-3 (July 2, 2012). Lisa Wilson-Foley was a candidate for the U.S. House of Representatives in the Fifth Congressional District of Connecticut in 2012. Each congressional district in Connecticut holds a party nominating convention that the Commission has recognized as an election separate from the primary and general elections. See Advisory Op. 1976-58 (Peterson); Advisory Op. 2004-20 (Farrell). The convention and primary elections at issue here occurred on May 14, 2012, and August 14, 2012, respectively.

1 the state office.² He also asserts generally that the Complaint is politically motivated and
2 meant to generate negative publicity.³

3 Based on the record presently before the Commission, the Commission finds no
4 reason to believe that Rowland violated 2 U.S.C. § 441b(a) in connection with the alleged
5 contribution from CBS Radio to the Committee.

6 **B. Alleged Corporate Contribution from CBS Radio**

7
8 1. Factual Background

9 The Complaint alleges that Rowland, as radio talk show host, and CBS Radio
10 made an impermissible in-kind corporate contribution to the Committee when Rowland
11 used his radio talk show to attack one of Wilson-Foley's opponents, Andrew Roraback,
12 that the Committee accepted an impermissible corporate contribution, and that the
13 Committee failed to disclose that contribution.⁴ The Complaint alleges that radio air time
14 is a commodity, and because Rowland used his show to benefit the Committee, the
15 Committee should have reported the air time as a contribution.⁵ The Complaint also
16 alleges that the Committee and CBS Radio coordinated the attack, with Rowland acting
17 on behalf of CBS Radio as its agent.⁶

18 The available information indicates that CBS Radio owns and operates WTIC, a
19 news/talk AM radio station serving the greater Hartford, Connecticut area. WTIC

² Rowland Resp. at 1-2 (Oct. 1, 2012).

³ *Id.* at 2.

⁴ Wilson-Foley faced Roraback in the May 14, 2012, convention election and the August 14, 2012, primary election.

⁵ Compl. at 2-3.

⁶ *Id.* at 2.

1 broadcasts nationally syndicated programming as well as local programming, including a
2 program hosted by Rowland that has been aired since September 2010. The show is
3 broadcast weekdays from 3 p.m. to 6 p.m. and “focuses on local issues that affect our
4 towns and state”⁷ According to the available information, the show’s topics cover a
5 range of subjects, from discussions of recent legislative activity to healthcare, state
6 spending, and taxes. The information further indicates that CBS Radio is a wholly-
7 owned subsidiary of CBS Radio Inc., a media and entertainment corporation specializing
8 in radio programming, and that CBS Radio Inc. is an indirect subsidiary of CBS
9 Corporation, a publicly traded mass media corporation that is neither owned nor
10 controlled by a candidate or political party. Finally, the information indicates that CBS
11 Radio was acting as a press entity at all times when it produced and broadcast Rowland’s
12 show on radio station WTIC.

13 Rowland states in his Response that he discussed with Roraback, a sitting state
14 senator, the death penalty issue, but “nothing to do with [the] campaign.”⁸

15 2. Legal Analysis

16 Under the Act, the term “expenditure” does not include any news story,
17 commentary, or editorial distributed through the facilities of any broadcasting station,
18 unless such facilities are owned or controlled by any political party, political committee,
19 or candidate.⁹ Commission regulations further provide that neither a “contribution” nor

⁷ See CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wticts-state-and-church/> (last visited Nov. 26, 2013).

⁸ Rowland Resp. at 2.

⁹ 2 U.S.C. § 431(9)(B)(i).

1 an “expenditure” results from “any cost incurred in covering or carrying a news story,
2 commentary, or editorial by any broadcasting station . . . unless the facility is owned or
3 controlled by any political party, political committee, or candidate[.]”¹⁰ These exclusions
4 are known as the “press exemption.” Costs covered by the press exemption are not
5 contributions or expenditures and are not subject to the reporting requirements of the Act
6 and Commission regulations.

7 The Commission conducts a two-step analysis to determine whether the press
8 exemption applies. First, the entity engaging in the activity must be a press or media
9 entity, in that its focus is the production, on a regular basis, of a program that
10 disseminates news stories, commentary, or editorials.¹¹ Second, the Commission
11 considers (i) whether the press entity is owned or controlled by a political party, political
12 committee, or candidate, and, if not, (ii) whether the press entity is acting as a press entity
13 in conducting the activity at issue (*i.e.*, whether it is acting in its “legitimate press
14 function”).¹²

15 Here, both steps of the press exemption analysis are met. First, CBS Radio is in
16 the business of producing and broadcasting national and local radio programs, including
17 Rowland’s radio show that airs weekdays and covers a variety of news stories,

¹⁰ 11 C.F.R. §§ 100.73, 100.132.

¹¹ See, e.g., Advisory Op. 2007-20 (XM Radio) (“AO 2007-20”); Advisory Op. 2005-19 (Inside Track) (“AO 2005-19”); Advisory Op. 2005-16 (Fired Up!) (“AO 2005-16”).

¹² *Reader's Digest Ass'n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981). In determining whether a press entity is acting in its legitimate function, the Commission considers (1) whether the press entity’s materials are available to the general public, and (2) whether the materials are comparable in form to those ordinarily issued by the press entity. AO 2005-16 (citing *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 251 (1986)).

1 commentary and editorial content.¹³ CBS Radio, therefore, is a press entity. Second,
2 CBS Radio is not owned or controlled by a political party, political committee, or
3 candidate. It also was acting within its legitimate press function: Rowland's weekday
4 radio show was broadcast to the general public throughout southern New England, not
5 just within the relevant district, and the format of the show appears to be comparable in
6 form to those ordinarily broadcast by CBS Radio. Further, as the Commission has
7 repeatedly stated, lack of objectivity in the show's news stories, commentaries, or
8 editorials is irrelevant.¹⁴ Thus, Rowland's radio show is covered by the press exemption
9 and any costs associated with the production and distribution of the show are not treated
10 as contributions or expenditures under the Act and Commission regulations. Given this
11 conclusion, the Commission need not consider whether the alleged contribution was
12 coordinated.¹⁵ The Commission therefore finds no reason to believe that John Rowland
13 violated 2 U.S.C. § 441b(a) by making a contribution in connection with his radio show.

¹³ See CBS Connecticut: John Rowland, <http://connecticut.cbslocal.com/audio-on-demand/wtict-state-and-church/> (last visited Nov. 26, 2013).

¹⁴ See AO 2007-20; AO 2005-19; AO 2005-16; Statement of Reasons, Comm'rs. Mason, McDonald, Sandstrom, Thomas, and Wold at 3, MURs 4929, 5006, 5090, 5117 (ABC, CBS, NBC, New York Times, Los Angeles Times, and Washington Post) ("Unbalanced news reporting and commentary are included in the activities protected by the media exemption").

¹⁵ See 11 C.F.R. § 109.21(b)(1) (excludes payments for exempted activities from in-kind contributions); MUR 6242 (J.D. Hayworth 2010) (because the press exemption applies to the alleged contributions, it is unnecessary to consider whether some of the activities might constitute coordinated communications).

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